

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

OMG ACCESSORIES LLC,

Plaintiff,

-against-

CLAIRE’S STORES, INC.,

Defendant.

Case No.

COMPLAINT

JURY TRIAL DEMANDED

Plaintiff OMG Accessories LLC (“OMG”), by its attorneys, Pryor Cashman LLP, as and for its Complaint against Claire’s Stores, Inc. (“Claire’s”), alleges as follows:

JURISDICTION AND VENUE

1. This is an action for copyright infringement arising under the United States Copyright Act of 1976, as amended, 17 U.S.C. §§ 101 *et seq.* Jurisdiction in this Court over these claims is proper pursuant to 28 U.S.C. §§ 1331 and 1338(a).

2. Venue is proper in the Southern District of New York pursuant to 28 U.S.C. §§ 1391(b) and 1400(a) in that a substantial part of the events giving rise to the claims asserted herein occurred in this judicial district.

THE PARTIES

3. Plaintiff OMG is a New York corporation with its principal place of business at 10 W. 33rd Street, Suite 408, New York, New York 10001. OMG is engaged in the business of designing, marketing, manufacturing and selling consumer products including, but not limited to, handbags, backpacks and accessories.

4. OMG has created an identity in the market for products bearing original and unique, custom designed prints created, at great expense to OMG, by its own internal design team. OMG

is widely regarded as a chic lifestyle brand for fashion-forward kids, teens and other demographic markets.

5. Defendant Claire's is, upon information and belief, a corporation with a principal place of business at 3 S.W. 129th Avenue, Pembroke Pines, Florida 33027 and is engaged in business as a retailer of consumer products including, but not limited to, bags, backpacks and other accessories. Upon information and belief, Claire's has offered for sale and sold products within this judicial district which infringe OMG's copyright interests and exclusive rights as set forth hereinafter.

Factual Allegations

OMG's Miss Butterfly Design

6. OMG independently created and is the copyright proprietor in the copyrighted design entitled "Miss Butterfly" (hereinafter the "Butterfly Design").

7. The Butterfly Design contains original material that is copyrightable subject matter pursuant to U.S. copyright law, and the Butterfly Design was published by OMG on or about May 3, 2019.

8. With respect to the Butterfly Design, OMG has complied in all respects with the Copyright Act of 1976, 17 U.S.C. § 101 *et. seq.* The Butterfly Design was duly registered for copyright protection in the United States Copyright Office under Registration Number VA 2-172-333 issued on August 26, 2019 (the "Butterfly Copyright Registration"). The Butterfly Copyright Registration is presently valid and subsisting, and OMG is the sole owner and proprietor of all right, title and interest in and to the Butterfly Design.

9. The Butterfly Copyright Registration and the Butterfly Design are collectively annexed hereto as **Exhibit A**.

OMG's Unicorn Icon Look Design

10. OMG independently created and is the copyright proprietor in the copyrighted design entitled “Unicorn Icon Look” (hereinafter the “Unicorn Design”).

11. The Unicorn Design contains original material that is copyrightable subject matter pursuant to U.S. copyright law, and the Unicorn Design was published by OMG on or about September 8, 2017.

12. With respect to the Unicorn Design, OMG has complied in all respects with the Copyright Act of 1976, 17 U.S.C. § 101 *et. seq.* The Unicorn Design was duly registered for copyright protection in the United States Copyright Office under Registration Number VA 2-127-941 issued on June 6, 2018 (the “Unicorn Copyright Registration”). The Unicorn Copyright Registration is presently valid and subsisting, and OMG is the sole owner and proprietor of all right, title and interest in and to the Unicorn Design.

13. The Unicorn Copyright Registration and the Unicorn Design are collectively annexed hereto as **Exhibit B**.

14. The Butterfly Design and the Unicorn Design are collectively referred to herein as the “OMG Designs”.

15. Upon information and belief, commencing in or around March 2021, Defendant Claire’s infringed OMG’s copyright interests in the OMG Designs by offering for sale and selling on its website backpacks and bags bearing designs copied or reproduced from the OMG Designs. Images of the products available for retail via the Claire’s website are annexed as **Exhibit C**.

16. Upon information and belief, Claire’s had access to the OMG Designs through OMG’s website, social media, showrooms, and/or samples.

17. Claire's has copied, reproduced, and sold items bearing the OMG Designs without the permission, license, or consent of OMG.

FIRST CAUSE OF ACTION
(Copyright Infringement)

18. Plaintiff hereby repeats and realleges the foregoing paragraphs of the Complaint as if fully set forth herein.

19. Defendant Claire's actions constitute infringement of the OMG Designs in violation of the Copyright Act, 17 U.S.C. §§ 101 *et seq.*

20. Plaintiff's OMG Designs are original works of authorship, copyrightable under 17 U.S.C. § 102.

21. Plaintiff's copyright in the Butterfly Design are registered with the United States Copyright Office under the Registration Numbers set forth above.

22. Plaintiff owns the copyrights in and has the exclusive right to exploit and administer the OMG Designs in the United States. As such, Plaintiff has the exclusive right to reproduce the OMG Designs and sell items bearing the OMG Designs.

23. As set forth above, Defendant Claire's has infringed OMG's exclusive copyrights by reproducing and selling items including, but not limited, to backpacks and bags, bearing the OMG Designs.

24. In addition, upon information and belief, Defendant Claire's was aware of OMG's copyright in the OMG Designs, and has willfully infringed upon the OMG Designs in disregard of and with indifference to the rights of Plaintiff OMG.

25. As a direct and proximate result of the infringements by Defendant Claire's, Plaintiff is entitled to damages in an amount to be proven at trial, including its actual damages and

Defendant's profits attributable to the infringement, or statutory damages, pursuant to 17 U.S.C. § 504.

26. Plaintiff is further entitled to attorneys' fees and costs pursuant to 17 U.S.C. § 505.

27. As a direct and proximate result of the foregoing acts and conduct, Plaintiff has sustained and will continue to sustain substantial, immediate, and irreparable injury, for which there is no adequate remedy at law. Unless enjoined and restrained by this Court, Defendant Claire's will continue to infringe Plaintiff's rights in the OMG Designs. Plaintiff is entitled to permanent injunctive relief.

WHEREFORE, Plaintiff OMG Accessories, LLC demands judgment against Defendant as follows:

A. That Defendant be adjudged to have infringed Plaintiff's copyright interest in the OMG Designs;

B. That Defendant be permanently enjoined from infringing the OMG Designs in any manner and from manufacturing, promoting, importing, selling, marketing, or otherwise disposing of any product bearing a design which infringes the OMG Designs;

C. That Defendant be required to pay Plaintiff, at Plaintiff's election before the entry of final judgment, either (i) such damages that Plaintiff has sustained in consequence of Defendant's infringement of the OMG Designs, as well as all gains, profits, and advantages derived by Defendant from such acts of infringement, or (ii) such statutory damages as the Court shall deem just and proper under the provisions of the Copyright Act;

D. That Defendant be required to pay to Plaintiff the costs of this action, including attorneys' fees; and

E. That the Court award Plaintiff any and all further relief as the Court may deem just and proper.

Dated: New York, NY
September 28, 2021

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